

**BullivantHouserBailey PC**

601 California Street, Suite 1800  
San Francisco, California 94108  
Telephone: 415.352.2700  
Facsimile: 415.352.2701

Andrew B. Downs, Nevada Bar No. 8052  
E-Mail: andy.downs@bullivant.com  
BULLIVANT HOUSER BAILEY PC  
601 California Street, Suite 1800  
San Francisco, California 94108  
Telephone: 415.352.2700  
Facsimile: 415.352.2701

Loren D. Podwill, *pro hac vice*  
E-Mail: loren.podwill@bullivant.com  
Margaret M. Van Valkenburg, *pro hac vice*  
E-Mail: megge.vanvalkenburg@bullivant.com  
BULLIVANT HOUSER BAILEY PC  
300 Pioneer Tower  
888 SW Fifth Ave.  
Portland, Oregon 97204  
Telephone: 503.228.6351  
Facsimile: 503.295.0915

Kristol Bradley Ginapp, Nevada Bar No. 8468  
E-Mail: kristol.ginapp@lewisbrisbois.com  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
6385 S. Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118  
Telephone: 702.893.3383  
Facsimile: 702.893.3789

Attorneys for Plaintiff Red Rock Insurance Company,  
formerly known as BancInsure, Inc.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BANCINSURE, INC., an Oklahoma  
corporation,

Plaintiff,

v.

JAMES M. JACOBS, an individual; CHARLIE  
GLENN, an individual; DANIEL DYKES, an  
individual; BRYON WAITE, an individual;  
and RICHARD MCCOLE, an individual,

Defendants.

Case No.: 3:13-cv-00302-RCJ-VPC

AND RELATED COUNTERCLAIM

MONTHLY JOINT STATUS REPORT

The undersigned parties submit the following joint status report:

**1. DISCOVERY**

The parties have completed six depositions, as follows:

Rhonda Ballare, January 16, 2014

Faith Cox, January 30, 2014

Alan Reed, February, 5, 2014

Denise Rudnick, February 5, 2014

William Hess, April 1, 2014

Barbara Ewing, April 3, 2014

The following depositions will take place before the April 18 Monthly Status Conference:

Dan Dykes, April 16, 2014 (Carson City)

Julie Kidd, April 17, 2014 (Carson City)

Red Rock and the FDIC are in the process of setting the deposition of former BancInsure employee Debbie Tebbe, most likely for late May in the vicinity of San Antonio, Texas. They have also begun preliminary discussions regarding further depositions to be taken, most likely in June.

**2. RED ROCK PROPOSAL TO PHASE MOTION PRACTICE AND MODIFY THE DISCOVERY PLAN**

**(a) Red Rock's Position**

Red Rock proposes to modify the scheduling order by phasing motion practice and moving expert disclosures and any expert discovery until after the Court has ruled on contemplated dispositive motions.

Red Rock sees three issues as probable subjects of motions under Rule 56, but depending on how the Court rules on certain issues, other issues may become moot. In an effort to simplify the litigation, reduce discovery costs and potentially relieve the court of the burden of considering motions on issues that may become moot, it proposes the following:

1 (i) Phase 1 Motions (due August 15, 2014).

2 These motions will address the applicability and interpretation of Exclusion V.A.21. of  
3 the BancInsure EPLI policy, more commonly known as the “Insured vs. Insured” exclusion and  
4 whether the Carson River Community Bank, the individual Directors and Officers, or the FDIC  
5 satisfied the requirements of Section IX, Notice of Claim, of the BancInsure EPLI policy.

6 (ii) Phase 2 Motions (due 45 days after the Court rules on Phase 1 Motions).

7 These motions will address the merits of the reformation claims made by the FDIC and  
8 the individual defendants.

9 Red Rock proposes that discovery be phased as well. Phase 1, non-expert discovery,  
10 would have a discovery cutoff of July 15, 2014 (earlier than the existing discovery cutoff) and  
11 Phase 2, expert discovery would commence on a date to be set by the Court following ruling on  
12 Phase 1 and/or Phase 2 motions. Any final dispositive motions would be due 30 days after the  
13 close of expert discovery, with the Pre-Trial Order being due 30 days after the last day to file  
14 dispositive motions, or the ruling on the last outstanding dispositive motion, whichever occurs  
15 first.

16 Red Rock’s reasoning in making this proposal is (a) the scope of expert testimony is  
17 likely to be narrowed by moving it to after the court has ruled upon dispositive, or partially  
18 dispositive motion (of course leaving all parties free to present expert evidence in connection  
19 with those motions if otherwise admissible); and (b) in other cases pending between the FDIC  
20 and Red Rock, the phasing of motion practice has made for clearer and more manageable  
21 motion practice.<sup>1</sup> Red Rock does not agree with the FDIC that every issue in dispute needs to  
22 be resolved in order for a final judgment to be entered. Rulings on certain issues may render  
23 other issues moot.

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25  
26  
27 <sup>1</sup> For example, *Hawker v. BancInsurance [sic]*, Eastern District of California No. 1:12-cv-  
28 01261-SAB in which the court opted to hear dispositive motions in phases, with the Insured vs. Insured exclusion issue being decided first.

1 (b) The FDIC

2 While the FDIC favors trying to find ways to efficiently and economically resolve issues  
3 in the case, it has concerns about BancInsure's proposal. In order to preserve all issues for  
4 appeal, it will be necessary to obtain a final judgment on all issues. Proceeding in piecemeal  
5 fashion as Red Rock suggests risks the unintended consequence of other issues not being  
6 preserved for appeal. It also appears that Red Rock's proposal would necessitate a change to the  
7 current scheduling order.

8 The FDIC also believes there is overlap between the issues regarding the insured vs.  
9 insured clause and the FDIC's claim for reformation and thinks the two cannot be considered  
10 separately. The FDIC therefore objects to changing the scheduling order as proposed by Red  
11 Rock.

12 **3. POSSIBLE DISCOVERY MOTION PRACTICE**

13 Red Rock is in the midst of the meet and confer process with the FDIC and the  
14 individual defendants, other than Jacobs, regarding those parties' responses to Red Rock's  
15 requests for production of documents. The discussions are ongoing and Red Rock and the FDIC  
16 would appreciate being given the opportunity to discuss these issues informally with the court at  
17 the April 18 Case Management Conference. Counsel for Red Rock and the FDIC both intend to  
18 appear in person at that conference.

1 DATED: April 15, 2014

2 BULLIVANT HOUSER BAILEY PC  
3 LEWIS BRISBOIS BISGAARD & SMITH LLP

4  
5 By /s/ Andrew B. Downs

6 Andrew B. Downs  
7 Nevada Bar No. 8052  
8 601 California Street, Suite 1800  
9 San Francisco, California 94108  
10 Telephone: 415.352.2700  
11 Facsimile: 415.352.2701

12 Loren D. Podwill  
13 Margaret M. Van Valkenburg  
14 300 Pioneer Tower  
15 888 S.W. Fifth Ave.  
16 Portland, Oregon 97204  
17 Telephone: 503.228.6351  
18 Facsimile: 503.295.0915

19 Kristol Bradley Ginapp  
20 Nevada Bar No. 8468  
21 6385 S. Rainbow Blvd., Ste. 600  
22 Las Vegas, Nevada 89118  
23 Tel: 702.893.3383  
24 Facsimile: 702. 893.3789

25 Attorneys for Plaintiff Red Rock Insurance  
26 Company, formerly known as BancInsure, Inc.  
27  
28

**BullivantHouserBailey PC**

601 California Street, Suite 1800  
San Francisco, California 94108  
Telephone: 415.352.2700  
Facsimile: 415.352.2701

1 DATED: April 15, 2014

2 SPROUSE SHRADER SMITH P.C.

3  
4 By /s/ Joel R. Hogue (by e-mail auth. ABD)

5 Joel R. Hogue  
6 Andrew Evans  
7 701 S. Taylor, Suite 500  
8 Amarillo, Texas 79105  
9 Tel: 806.468.3300  
10 Fax: 806.373.3454

11 Attorneys for Defendant in Intervention and  
12 Counterclaimant Federal Deposit Insurance  
13 Corporation

14 DATED: April 15, 2014

15 /s/ James M. Jacobs (by e-mail auth. ABD)

16 James M. Jacobs  
17 PO Box 122  
18 Genoa, Nevada 89411  
19 Tel: 775.720.9716

20 Defendant in *pro se*

21 DATED: April 15, 2014

22 /s/ Charlie Glenn (by e-mail auth. ABD)

23 Charlie Glenn  
24 904 N Cottage St.  
25 Porterville, California 93257  
26 Tel: 775.835.3325

27 Defendant in *pro se*

28 DATED: April 15, 2014

/s/ Daniel P. Dykes (by e-mail auth. ABD)

Daniel P. Dykes  
PO Box 693  
Genoa, Nevada 89411  
Tel: 775.783.8364

Defendant in *pro se*

1 DATED: April 15, 2014

3 /s/ Richard McCole (by e-mail auth. ABD)

4 Richard McCole  
5 1760 Ironwood Dr.  
6 Minden, Nevada 89423

7 Defendant in *pro se*

8 DATED: April 15, 2014

9 /s/ Byron Waite (by e-mail auth. ABD)

10 Byron Waite  
11 1215 W Cottage Loop  
12 Gardnerville, Nevada 89460

13 Defendant in *pro se*

14 14821413.4

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BullivantHouserBailey PC

601 California Street, Suite 1800  
San Francisco, California 94108  
Telephone: 415.352.2700  
Facsimile: 415.352.2701